IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 244 OF 2006.

Dnyaneshwar Manaji Hundare & anr. ... Appellants.
Versus.
Kantabai Satyawan Hundare & others. ... Respondents.

Shri Ashish Gaikwad for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2006.

P.C.:

1. The submissions of the Advocate appearing for the Appellants were heard on 28th March 2006. As the Advocate for the Appellants sought time to take instructions, the order was not passed on that day. On 12th April 2006 further time was granted. Today the Advocate for the Appellant stated that it is not possible to put an end to the matter.

2. The Second Appeal is by the original Defendants Nos.1 and 2. The suit for partition filed by the Respondents Nos.1 to 3 has been decreed by the trial Court holding that they have 1/5th share in the suit property. The contention of the Appellants was that the agricultural land which was the subject matter of the suit was the self acquired property of the Appellant No.1/Defendant No.1. The trial Court negatived the said contention. The finding of the trial Court has been confirmed by the first Appellate Court.

3. The learned Advocate for the Appellants contended that the sale deeds of the suit land which were produced and proved before the trial court show that the lands subject matter of the sale deeds were acquired by the Appellant No.1. He submitted that Appellant No.1 was under no obligation to prove that the lands were self acquired properties and in fact the burden was on the original Plaintiffs to prove that the lands were joint family properties.

4. I have considered the submissions. The Appellate Court has considered the oral and documentary evidence on record. The Appellate Court has noted that in the sale deed which was relied upon by the the Appellants, the occupation of Appellant No.1 was shown as agriculturist. The case of the Appellant No.1 was that he had obtained hand loans from others and purchased the said lands. The Appellate Court noted that the Appellant No.1 has not examined any witness to establish that any such hand loans were taken by him. The finding of fact has been recorded that except for the agricultural land held by the joint family, there was no source of income available to the Appellant No.1 to acquire the land in question.

5. there are finding of fact recorded by both the Courts on appreciation of oral and documentary evidence that the lands which were subject matter of the decree

were joint family properties. It is not possible to interfere with the concurrent findings of fact recorded on the basis of appreciation of evidence. No substantial question of law arises. The Second Appeal is dismissed.

Judge.